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Bryce Suzuki (*pro hac vice pending*)  
 (AZ Bar No. 022721)  
 Steven D. Jerome (*pro hac vice pending*)  
 (AZ Bar No. 018420)  
 Snell & Wilmer LLP.  
 1 East Washington Street, Suite 2700  
 Phoenix, AZ 85004  
 Telephone: (602) 382-6000  
 Facsimile: (602) 382-6070  
 E-Mail: [bsuzuki@swlaw.com](mailto:bsuzuki@swlaw.com)  
[sjerome@swlaw.com](mailto:sjerome@swlaw.com)

Blakeley E. Griffith (NV Bar No. 12386)  
 Snell & Wilmer LLP.  
 3883 Howard Hughes Parkway, Suite 100  
 Las Vegas, NV 89169  
 Telephone: (702) 784-5200  
 Facsimile: (702) 784-5252  
 E-Mail: [bgriffith@swlaw.com](mailto:bgriffith@swlaw.com)

*Attorneys for Silverview Credit Partners, LP  
 as Agent for Lender Parties*

# UNITED STATES BANKRUPTCY COURT

## DISTRICT OF NEVADA

In Re:

RAWHIDE MINING LLC,

Debtor.

Case No. 23-15619-hlb  
 Chapter 11

**DECLARATION OF BRIAN RIGERT IN  
 SUPPORT OF PRELIMINARY  
 OBJECTION OF AGENT TO  
 EMERGENCY MOTION FOR INTERIM  
 AND FINAL ORDERS: (I) AUTHORIZING  
 DEBTORS TO OBTAIN POST-PETITION  
 SENIOR, SECURED, SUPERPRIORITY  
 FINANCING; (II) GRANTING LIENS AND  
 SUPERPRIORITY CLAIMS; (III)  
 MODIFYING THE AUTOMATIC STAY;  
 (IV) SCHEDULING INTERIM AND FINAL  
 HEARINGS; AND (V) GRANTING  
 RELATED RELIEF**

I, BRIAN RIGERT, declare as follows:

1. I am a founding partner of Silverview Credit Partners, LP (f/k/a Silverpeak Credit Partners, LP) ("Silverview"), the administrative agent for certain lenders under that certain *Loan and Security Agreement*, as described in more detail below, ("Agent") and party-in-interest in the

1 above-captioned Chapter 11 bankruptcy cases<sup>1</sup> (“Bankruptcy Case”) of Rawhide Mining, LLC  
 2 (“Rawhide”) and Rawhide Acquisition Holding, LLC (“Holding” together with Rawhide, the  
 3 “Debtors”).

4 2. I have personal knowledge of the foregoing and would testify thereto in open  
 5 Court if called as a witness.

6 3. I make this Declaration in support of *Agent’s Preliminary Objection Emergency*  
 7 *Motion for Interim and Final Orders: (I) Authorizing Debtors to Obtain Post-Petition Senior,*  
 8 *Secured, Superpriority Financing; (II) Granting Liens and Superpriority Claims; (III) Modifying*  
 9 *the Automatic Stay; (IV) Scheduling Interim and Final Hearings; and (V) Granting Related Relief*  
 10 (the “DIP Objection”).

11 **A. The Silverview Loan**

12 4. As acknowledged by the Debtors in the Schlumberger Decl.,<sup>2</sup> on or about January  
 13 3, 2019, Rawhide, as borrower, and Holding as parent, executed a *Loan and Security Agreement*  
 14 in favor of Silverview Credit Opportunities AIV LP (f/k/a Silverpeak Credit Opportunities AIV  
 15 LP) and COEF Holdings LP (collectively, “Lenders”) and Agent (collectively with the Lenders,  
 16 the “Lender Parties”) whereby the Lender Parties agreed to provide certain extensions of credit,  
 17 loans, and other financial accommodations to Rawhide, in the original principal amount of  
 18 \$18,100,000, plus all unpaid interest, fees, costs, and charges (the “Loan”). A true and correct  
 19 copy of the Loan and Security Agreement is attached hereto as **Exhibit 1**.

20 5. The following summary provides an overview of the Loan Documents:

21 a. On or about January 3, 2019, Rawhide, as “Grantor” executed that certain  
 22 *Deed of Trust, Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement,*  
 23 *Fixture Filing and As-Extracted Collateral Filing* (“Deed of Trust”) for the benefit of Silverview,  
 24 to secure, among other things payment of all the indebtedness and performance of the obligations  
 25 under the Loan Agreement. The Deed of Trust was recorded on January 3, 2019, in the Official  
 26

27 <sup>1</sup> On December 20, 2023, the Debtors filed a *Motion for Order Directing Joint*  
*Administration of Chapter 11 Cases* [ECF No. 3] (the “Motion for Joint Administration”).

28 <sup>2</sup> All capitalized terms not defined herein shall have the same meanings as set forth in the  
 DIP Objection.

Records of Mineral County, Nevada as Instrument No. 169965. A true and correct copy of the Deed of Trust is attached hereto as **Exhibit 2**. The Deed of Trust relates to certain real and personal property described more specifically therein as the “Property” which relates to a gold mine located in Hawthorne, Nevada (the “Mine”).

b. The Loan was subsequently amended by: (i) that certain Amendment No. 1 to Loan and Security Agreement, dated as of October 31, 2019, (ii) that certain Amendment No. 2 to Loan and Security Agreement, dated as of March 12, 2021, (iii) that certain Third Amendment to Loan and Security Agreement, dated as of February 20, 2023, pursuant to which the aggregate original principal amount of the Loan increased to \$18,450,000 and EMX USA Services Corp. (“Equity Lender”) made a term loan to the Debtors in the aggregate original principal amount of \$150,000.

c. As acknowledged by the Debtors, the Loan is secured by all assets of Rawhide and its subsidiaries, including, but not limited to, Accounts, Chattel Paper, Commodity Contracts, Deposit Accounts, Documents, Equipment, Fixtures, General Intangibles, Goods, Instruments, Intellectual Property, Inventory, Investment Property, Letter of Credit Rights and Supporting Obligations, Commercial Tort Claims, and the proceeds and products of the foregoing along with a pledge of Holding’s equity in Rawhide pursuant to that certain Pledge and Security Agreement dated as of January 3, 2019. A true and correct copy of the Pledge and Security Agreement is attached hereto as **Exhibit 3**.

d. Silverview perfected the security interest in the Collateral by, among other things, recording: (i) that certain UCC Financing Statement dated as of January 7, 2019, with the Delaware Department of State as Initial Filing No. 20190127899 as to Rawhide, as amended, and (2) that certain UCC Financing Statement dated on or about January 7, 2019, with the Delaware Department of State as Initial Filing No. 20190127733 as to Holding (as amended, continued, and assigned, the “UCCs”). True and correct copies of the UCCs and amendments thereto are attached hereto as **Exhibit 4**.

## **B. Loan Defaults and Forbearance Agreements**

6. The Debtors defaulted under the Loan Documents by, among other things, failing

1 to make the cash payment of interest and principal due on March 15, 2022. Upon default,  
2 Silverview delivered to Debtors that certain notice of acceleration dated as of March 24, 2022  
3 (the “Notice of Acceleration”), pursuant to which Silverview notified the Debtors that its secured  
4 obligations are immediately due and payable (including, from and after March 15, 2022, default  
5 interest pursuant to section 21.3 of the Loan Agreement) and demanded immediate payment in  
6 the amount of \$15,813,577.68.

7 7. As set forth above, beginning in 2022, the Debtors began having cash flow  
8 problems and could not service the Loan.

9 8. On July 19, 2022, the Lender Parties and the Debtors, among others, entered into  
10 that certain Forbearance Agreement (the “2022 Forbearance Agreement”) wherein the Lender  
11 Parties agreed to forbear from exercising default-related rights and remedies for a specified period  
12 of time to allow the Debtors to refinance the Loan or sell the Mine. A true and correct copy of  
13 the 2022 Forbearance Agreement is attached hereto as **Exhibit 5**.

14 9. Ultimately, the forbearance period under the 2022 Forbearance Agreement expired  
15 and the Debtors were unable to obtain refinance the Loan or otherwise repay the Loan.

16 10. On September 15, 2023, the Lender Parties and the Debtors, among others, entered  
17 into that certain Forbearance Agreement (the “2023 Forbearance Agreement”) wherein the  
18 Lender Parties again agreed to forbear from exercising default-related rights and remedies for a  
19 specified period of time to allow the Debtors to refinance the Loan or sell the Mine. A true and  
20 correct copy of the 2023 Forbearance Agreement is attached hereto as **Exhibit 6**.

21 11. As a condition of effectiveness to the 2023 Forbearance Agreement, the Debtors  
22 agreed to retain a Chief Restructuring Officer acceptable to the Lender Parties to, among other  
23 things, oversee the Debtors’ business and assets and negotiate and consummate a sale of all or  
24 substantially all of the Debtors’ assets on terms acceptable to the Lender Parties. *See* Exhibit 6 at  
25 ¶ 6.

26 12. The Lender Parties agreed to continue to provide funding for immediate cash  
27 needs, such as to paying employees and maintaining insurance.

28 13. As set forth in the 2023 Forbearance Agreement, the Debtors stipulated and agreed

1 that the Debtors were indebted to the Lender Parties in the amount of no less than \$20,517,613,  
 2 along with accruing interest, fees (including, without limitation, reasonable attorneys' fees), costs  
 3 as of September 11, 2023. *Id.* at ¶ 3.

4 C. **Mining Operations Ceased, the Appointment of Chief Restructuring Officer,**  
 5 **and Negotiations with DeJong Capital LLC**

6 14. Upon information and belief, since approximately August 2023, the Debtor has not  
 7 been conducting regular mining operation at the Mine and mining operations have essentially  
 8 ceased.

9 15. Upon information and belief, once it was clear that the Mine had ceased  
 10 operations, the Bureau of Land Management ("BLM") initiated reclamation work at the Mine.

11 16. Shortly after September 15, 2023, the Debtors retained Eric Camm of Turning  
 12 Point Strategic Advisors to act as Chief Restructuring Officer.

13 17. Starting in or about September 15, 2023, Eric Camm oversaw the Debtors'  
 14 business and assets and engaged in negotiations to sell substantially all of the Debtors' assets.

15 18. Beginning in November 2023, the Lender Parties and the Debtors have been  
 16 negotiating potential out-of-court restructuring transactions with DeJong Capital LLC ("DeJong")  
 17 to allow DeJong to either acquire the equity in assets of the Debtors or the equity in Rawhide.

18 19. Despite numerous communications with the Debtors regarding the out-of-court  
 19 restructuring, the Debtors did not discuss the proposed DIP loan or the filing of the Bankruptcy  
 20 Cases with the Lender Parties.

21 20. Additionally, at no point did the Debtors ask the Lender Parties if they would be  
 22 interested in providing DIP financing.

23 21. Similarly, at no point did DeJong discuss the proposed DIP loan or the Bankruptcy  
 24 Cases with the Lender Parties.

25 22. As of December 20, 2023, Debtors are indebted to the Lender Parties in the  
 26 amount of no less than \$19,680,043.82, along with accruing interest, fees (including, without  
 27 limitation, reasonable attorneys' fees), costs, and expenses.

28 23. Based on the information known to the Lender Parties to date, the Lender Parties

1 believe the current value of the Collateral is less than the current amount outstanding under the  
2 Loan. Agent, on behalf of Lender Parties, disputes that the Debtors' proposal adequately protects  
3 the Lender Parties. In fact, Agent, on behalf of the Lender Parties, believes that the Lender Parties  
4 will be in a materially worse position if the relief sought in the Motion is granted.

5 24. At no point during the discussions with the Debtors or DeJong did the Debtors or  
6 DeJong take the position that the value of the Collateral exceeded the amount of debt owed to the  
7 Lender Parties.

8 25. During the negotiations, DeJong took the position that Lender Parties would be  
9 lucky to receive \$5–10 million for the Collateral, and DeJong indicated that the maximum it  
10 would pay would be less than 50% of the face value of the Loan to the Lender Parties under any  
11 restructuring or refinancing proposal.

12 26. Upon information and belief, on or about mid-December 2023, the Debtors  
13 received and are holding an insurance check from Zurich Insurance in the approximate amount of  
14 over \$210,000 on account of the Debtors' business interruption claim.

15 27. I declare under penalty of perjury under the laws of the United States that the  
16 foregoing is true and correct.

17 DATED this 27th day of December 2023.

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19  
20 /s/ Brian Rigert  
21 BRIAN RIGERT  
22 Partner, Silverview Credit Partners, LP  
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